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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 522

UNITED STATES *ex rel.* GEORGE E. THOMPSON,
Petitioner

v.

WILLIAM LENNON, Sheriff of Philadelphia,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, George E. Thompson, on relation of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on July 18, 1958.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court (R.* 12a-22a) is reported in 157 F. Supp. 93. The opinion of the Court of Appeals, *infra,* page 19, Appendix B, is reported in 258 F. 2d 320.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 18, 1958, Appendix B, p. 20, *infra,* rehearing was denied on September 17, 1958, *id.,* p. 21. Jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

* Printed appendix record titled "Appellant's Appendix," appellee having printed no additional material. Nine copies accompany this petition.

QUESTIONS PRESENTED

This case grows out of the arrest and imprisonment, upon state process, of a civilian employee of the United States within an area in the State under the exclusive jurisdiction of the United States. The essence of the charge was that solely by performing his duties as a federal employee within such area, he had become liable to fine and imprisonment for failing to file a return and pay a tax on his earnings to a municipality of the State. No other jurisdictional fact or event was involved, the employee being a non-resident, and non-domiciliary of the State, at no time setting foot on territory subject to state jurisdiction. The questions presented are:

1. In such case, must the federal employee exhaust state remedies before applying to a federal court for a writ of habeas corpus?

2. Did Congress in the Public Salary Tax Act, removing state tax immunity from federal salaries, or in the Buck Act, removing the immunity from salaries earned in federal areas,

(a) Grant the States power to exercise such penal control over the personal liberty of federal employees in the discharge of their duties?

(b) Grant such territorial jurisdiction over the person in this one regard, while withholding every other attribute of sovereignty?

3. If so, was such grant of power contrary to the Fourth and Fifth Amendments prohibiting arbitrary arrest and seizure, and deprivation of liberty without due process of law?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions involved are Article I, Section 8, Clause 17, and pertinent provisions of the Fourth and Fifth Amendments. Statutes involved are portions of the Public Salary Tax Act, 53 Stat. 575, 5 U.S.C. 84a, and the Buck Act, 54 Stat. 1059, 4 U.S.C. 106, *et seq.* All are printed in Appendix A, *infra*, pp. 17-18.

Statement

Petitioner is a subordinate federal civil servant living in New Jersey. His employment with the Navy Department requires him to travel from his home in New Jersey across the Delaware River by ferry to work on League Island, a federal enclave on the Pennsylvania side of the river. (R. 3a-4a)

A duly enacted ordinance of the City of Philadelphia imposes an annual tax for general revenue purposes of 1¼%,

> "On salaries, wages, commissions, and other compensation earned * * * by non-residents of Philadelphia for work done or services performed or rendered in Philadelphia." (R. 6a)

As construed by the highest court of Pennsylvania in *Kiker* v. *Philadelphia*, 346 Pa. 624, 31 A2d. 289, Cert. den. 320 U.S. 741, "work done or services performed or rendered," includes the performance of duties by employees of the United States, and "in Philadelphia" includes League Island.

This provision of the ordinance is simply a property tax, imposing no personal liability. However,

here involved are further provisions which require persons whose salaries or wages become subject to the tax to file a quarterly return showing aggregate earnings during the preceding three months, and at the same time to pay the tax thereon. Failure to file a return or pay the tax subjects the individual to arrest, fine, and imprisonment. (R. 5a, 6a) *Philadelphia* v. *Cline*, 158 Pa. Super, 179, 44 A2d. 680 cert. den. 328 U.S. 848.

In discharging his duties as a civilian employee of the United States Department of the Navy, petitioner, a domiciliary and resident of New Jersey, is required to perform services for the United States within the Philadelphia Naval Shipyard on League Island. Situated on the Pennsylvania side of the Delaware River (Geographically Philadelphia), League Island is under the exclusive jurisdiction of the United States, having been acquired by the United States in 1868 with the consent of the State of Pennsylvania, pursuant to Article I, Section 8, Clause 17 of the Constitution of the United States. Under this provision Congress exercises "like Authority" in such places as it exercises over the District of Columbia. League Island has been used by the United States since 1868 solely for building, servicing, and maintaining ships of war and other vessels and equipment of the United States Navy. (R. 3a-4a).

Petitioner failed to file a return or pay the tax. While engaged in the performance of his federal duties, he was arrested by the Sheriff of Philadelphia on League Island. While there restrained of his liberty, he appealed to the United States District Court for the area for a writ of habeas corpus. (R. 2a).

His verified petition admitted the facts which under State law subjected him to the command of the ordinance: (1) performance of duties as a federal employee, (2) in an area within the geographic boundaries of Philadelphia, although under the exclusive jurisdiction of the United States. He expressly negatived all other contact: residence, domicile, property. He does not even set foot on territory within the political jurisdiction of Pennsylvania, travelling from his home in New Jersey direct to League Island by special ferry across the Delaware River. (R. 4a)

The District Court dismissed the petition, as amended, upon motion, because petitioner had failed to exhaust state remedies and also because it found that the city had jurisdiction to impose the tax (R. 14a, 17a, 23a). The Court of appeals affirmed on the same basis and adopted the District Court opinion. Appendix B, *infra*, p. 19. A petition for rehearing and for hearing in banc, nine copies of which accompany this petition, was denied by a 3-1 vote, the 3 remaining judges of the circuit being absent at the time. *id*, p. 21.

REASONS FOR GRANTING THE WRIT

1. Habeas Corpus. This is the first case ever to hold that a federal employee in state custody must exhaust state remedies before raising the claim in a federal court that he is in custody for an act done or omitted in pursuance of the laws of the Congress of the United States.[1] Such claims have, of course, been rejected on their merits, but never has a federal court required

[1] The language of the petition (R. 4a) and of 28 U.S.C. 2241(c)(2) derived from Act of March 2, 1833, 4 Stat. 632, 634, "The Force Act."

exhaustion of state remedies as a condition to raising such claim upon petition for habeas corpus.[2]

The reasons for prompt determination of such cases by federal courts are best recounted in the following language of *In re Neagle*, 135 U.S. 1, 61-62:

> "The general government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers * * * It can act only through its officers and agents, and they must act within the state. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a state court, for an alleged offense against the law of the State, yet warranted by the federal authority they possess, and if the general government is powerless to interfere at once for their protection—if their protection must be left to the action of the state court—the operations of the general government may at any time be arrested at the will of one of its members. The legislation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the national government, and in obedience to its laws. It may deny the authority conferred by those laws. The state court may administer not only the laws of the State, but equally federal law, in such a manner as to paralyze the operations of the government. And even if, after trial and final judgment in the state court, the case can be brought to the United States court for review, the officer is withdrawn from the discharge of his

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[2] A great number of federal employee habeas corpus cases are collected in a recent study, Report of Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, Part II, GPO 1957, pp. 308-313. Significantly there is no mention of the exhaustion principle ever being applied in such cases. None have heretofore been cited by respondent or the courts below.

> duty during the pendency of the prosecution, and the exercise of acknowledged federal power arrested. We do not think such an element of weakness is to be found in the Constitution."

While lacking some of the glamour of the case of the gunslinging Marshal Neagle, the case which petitioner urges this court to review echoes these considerations in the concrete. The act upon which the State predicates its jurisdiction over petitioner is not simply a fragment of the duties of a federal employee, but the sum total of all his duties. Moreover, those duties are performed in an area acquired pursuant to a constitutional provision designed to insulate those activities not only from any state control, but from any question of state control by making Congress the exclusive legislator for them.

The consequences of state interference are spelled out in the petition and in the amendment thereto. Under state law, in default of $300 bail, petitioner would be imprisoned for almost a full month before being accorded any kind of hearing on the complaint lodged against him by a municipal employee. Such practices are employed almost exclusively against federal employees in petitioner's situation, who are frequently subjected to great indignities and inhumane treatment. Many of them have left federal employment as a consequence. (R. 11a)[3]

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[3] While the District Court had under advisement respondent's motion to strike or dismiss the petition for habeas corpus and the amendment thereto as insufficient on their face, respondent filed an affidavit challenging "on information and belief" some of the allegations of the amendment concening the kind of treatment given federal employees when arrested by Philadelphia authorities. Three days later the court handed down its opinion rejecting some of the allegations of the amendment as "not

It does not seem to petitioner, as it did to the court below (R. 15a, n. 7), that *In re Neagle* depended on the circumstances that a civil servant of the federal government was employed in the business of the courts rather than in the business of the military, any more than *In re Ladd,* 74 Fed. 31, turned upon any consideration of the prisoner being a military rather than a civil servant of the federal government.

While this court has never in so many words ruled upon this subject, it would seem that the decision below was implicitly in conflict with applicable decisions of this court. In any event, doubt in this narrow but important class of cases is in itself an evil. It is a serious weakness in facing rampant localism. It was apparently so regarded by the Senate in amending the 1948 Judicial Code Bill so as to limit the codification of the exhaustion principle to persons in state custody pursuant to the *judgment* of a state court, (28 U.S.C. 2254) for fear that the broader proposal "would unduly hamper federal courts in the protection of federal officers prosecuted for acts committed in the

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supported by the fair preponderance of the evidence," resolving "conflicts" in affidavits, etc. When the Court of Appeals adopted the opinion of the District Court, the seeming incongruity of such statements when there had been no traverse, no evidence, and no hearing, was called to its attention in a petition for clarification accompanying a petition for rehearing and hearing en banc. The foregoing matters are detailed with appropriate references to the record at pages 3 and 4 of the Petition for Clarification, etc., nine copies of which are filed herewith. The Court of Appeals rejected these petitions by a 3 to 1 vote, the remaining three judges of the court being absent during the summer recess. Since review is here sought on the record before the trial court rather than an interpretation of it, no point is made of this matter here except to note that the entire record is very short.

course of official duty." Senate Report No. 1559, 80th Congress, 2d Sess., Amendment No. 47.

2a. Federal Function. In construing the Public Salary Tax Act and the Buck Act as authorizing state control over the personal liberty of federal employees solely by reason of their having performed their duties within the State, the court below decided an important question of federal law which has not been, but should be settled by this court.

In *Howard* v. *Commissioners*, 344 U.S. 624, Mr. Justice Douglas for the minority said (p. 629):

> "Congress has not yet granted the local authorities the right to tax the privilege of working for or doing business with the United States."

The majority apparently did not think that this was involved in that case, for they did not discuss the proposition. The parties to that injunction suit were residents of the same county in which the taxing city was located.[4] The ruling of the majority was concerned with the power of the State to alter the borders of its political subdivisions irrespective of federal areas, and whether the tax involved was an "income tax" within the meaning of the Buck Act.

The question suggested by the minority[5] is squarely presented in this case. No complicating factor of

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[4] Transcript of Record, No. 295, October Term, 1952, page 2.

[5] A parallel idea was recently alluded to in *U. S.* v. *Township of Muskegon*, 355 U.S. 484, 486, where, in denying a local tax exemption to a private government contractor, the court remarked: "The case might well be different if the Government had reserved such control over the activities of Continental that it could properly be called a 'servant' of the United States in agency terms."

jurisdictional "contact" is involved save the performance of duties by a federal employee. Moreover, the question here involved is not simply a fragment of jurisdiction known as "jurisdiction to tax" but embraces the very summit of jurisdiction: the power to exercise penal control over the personal liberty of federal employees in the exercise of their duties. Nevertheless, the opinion of the District Court and of the Court of Appeals treat the question here presented solely as a question of "jurisdiction to tax" and place complete and uncritical reliance on a state court opinion in an action to enjoin the collection of what is plainly a simple property tax.

Even on a purely limited question of "jurisdiction to tax," no prior opinion, state or federal, has ever discussed the question of whether the Public Salary Tax Act in removing state tax immunity from federal salaries, ever intended that performance of duty by federal employees, standing entirely apart from any other possible basis of jurisdiction, was a permissible ground for the exercise of state tax jurisdiction.

Prescinding from the gross injustice involved, discussed later, the consequences of such construction to the operations of the federal government are staggering: Any federal officer or employee who performs any of his official duties within a State may be required to report such fact to the State together with such information as it may require to evaluate the time spent in the State, earnings, and expenses while so engaged. The federal officer or employee may then be required to pay a percentage of such earnings to the locality. It might be said that the locality might not chose to arrest, fine and imprison some high ranking federal official who failed to comply, or that it

might overlook the performance of duties that only involve a relatively short period of time within the locality. But such a congeniality is not to be relied upon. The history of our country is replete with localism, and there are numerous examples of local hostility to federal officers in our time. If the principle of taxing federal operations is accepted in this sphere it is applicable to the high and the low, the short and the long.

Mr. Justice Holmes summed up the importance of this question in *Johnson* v. *Maryland*, 254 U.S. 51, 55, where, in rejecting an attempt to fine a federal employee for failure to obtain a state driver's license to operate a government vehicle, he said:

> "Here the question is whether the state can interrupt the acts of the general government itself."

2b. Federal Territory. The principle of the decision below, applied to areas near at hand, would result in residents of Virginia being taxed by Maryland for the privilege of working in the District of Columbia, and in default, being arrested and imprisoned in the District by Maryland authorities. However shocking this may be to Virginia residents working in the District of Columbia, it is not the less shocking to New Jersey residents working on League Island. Nor is this a loose analogy.

Federal jurisdiction over the District of Columbia and League Island was acquired in the same way. The method is set out in Article I, Section 8, Clause 17 of the Constitution. The quantum of jurisdiction thereby acquired over places such as League Island is expressly, "like Authority" as Congress exercises over the District of Columbia. Geographically, the analogy

is also complete. League Island, like the District of Columbia, is situated on a navigable river forming the boundary between two States. In going to and from his employment on League Island, petitioner travels by special ferry direct from the New Jersey shore, and does not enter Pennsylvania any more than Virginia residents enter Maryland in crossing the Potomac River by bridge. The only place where the analogy breaks down is that Congress has legislated extensively for the District of Columbia, but other areas under the exclusive jurisdiction of the United States have been treated somewhat like stepchildren in this regard.[6] But this is a matter of degree only, for it would not be expected that sovereignty is to be lost by the manner in which it is exercised.

The Buck Act does not except the District of Columbia from its provisions. Of course, if Congress by the Buck Act abondoned its exclusive jurisdiction or suspended it in some way as by giving Federal Areas

[6] An example, significant here, concerns extradition. In the District of Columbia, a judge of the United States District Court sits as the chief executive for the area to protect the rights of the person sought to be extradited (D. C. Code, 1951 Ed., Sect. 23-401, 402, 31 Stat. 1340, amended, 67 Stat. 106). Extradition in areas other than the District is usually controlled by a reservation in the act of cession, permitting the execution of state civil and criminal process within the ceded lands. Such reservations have been construed as in the nature of extradition agreements between sovereigns: state process is *quoad hoc* federal process, and may be executed only "for acts done within and cognizable by the State," the State having no "right to punish for acts done within the ceded lands." *Fort Leavenworth R.R. Co.* v. *Lowe*, 114 U. S. 525, 534. However, since there is no chief executive officer within areas such as League Island, the only protection of the individual in such matters is entrusted to the hands of the United States District Court for the area upon petition for habeas corpus. *In re Ladd*, 74 Fed. 31, *Ex Parte Tatem*, 23 Fed. Cas. 708, No. 13759.

over to private use, the analogy would be destroyed.[7] But 4 U.S.C. 108 expressly provided that the Buck Act was not to be so construed, and at all times since its acquisition almost one hundred years ago, League Island "has been used by the United States solely and exclusively as a shipyard for building, servicing, and maintaining ships of war and other vessels and equipment of the United States Navy." (R. 3a). One of the express purposes of this section retaining exclusive jurisdiction over federal areas was to prevent a sharing of federal penal jurisdiction in such areas. (Senate Report 1625, 76th Congress, 3d Sess.)

The Buck Act grew out of the changed understanding of the concept of immunity expressed just the previous year in *Graves* v. *New York ex rel. O'Keefe*, 306 U.S. 466 and the Public Salary Tax Act. Before 1939 it was thought that a federal employee, although otherwise subject to local taxation of his income as in the case of either a domiciliary or resident, was nevertheless relieved of the tax on that part of his income received as salary from the federal government. Although it would seem implicit after 1939 that immunity would not exist with respect to a salary earned within a federal area, nevertheless such questions were raised in both Maryland and Pennsylvania after *O'Keefe* but before the Buck Act.[8]

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[7] *Offutt Housing Company* v. *County of Sarpy*, 351 U.S. 253.

[8] *Wood* v. *Tawes*, 28 A2d 850 (Maryland, salary earned in D. C.). *Philadelphia* v. *Schaller*, 25 A2d 406 (Pennsylvania, salary earned on League Island). The Pennsylvania court thought that the Buck Act was merely declaratory of *O'Keefe*. Later in *Kiker* v. *Philadelphia*, 31 A2d 289, at page 297, the court could not conceive of Congress passing such an act merely declaratory of existing law.

The construction of the courts below[9] is that Congress retained jurisdiction in every aspect save one: territorial taxing jurisdiction. This construction leads to an absurdity: a taxing power without sovereignty. It completes the analogy announced at the outset: Maryland authorities arresting Virginia residents in the District of Columbia because they worked in the District of Columbia and failed to pay a Maryland tax.

3. 4th and 5th Amendments. Reliance for imposing fine and imprisonment here stems entirely from federal statutes. This is more than a case of the federal "thumb on the scales" (*P.U.C.* v. *Pollak*, 343 U.S. 451, 461-462), and if the construction of these statutes by the court below be correct, a question of their validity arises. Such construction presents the aspect of federal consent to the exercise of state power to tax and imprison with respect to functions and territories as to which the State possesses no other attribute of sovereignty.

The United States does not permit state control over the activities of its employees even in so grave a matter as murder or in so slight a matter as a driver's license. By what right therefore, can the State make this same activity the sole basis for exercising jurisdiction to tax, to fine, arrest and imprison? This is

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[9] Pennsylvania decisions concerning the Buck Act fail to bear out respondent's claim of uniformity. They reflect state territorial claims for tax purposes, and extraterritoriality for all other purposes. Recently *Schwartz* v. *O'Hara Twp. School District*, 375 Pa. 440 denied residents of a federal area the right to attend public schools, because the area was under the exclusive jurisdiction of the United States. Questions of this character and those referred to in note 6 *supra* have prompted recent studies. See report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, GPO, Part I, 1956, Part II, 1957.

certainly a one-way sovereignty. It is not warranted by the opinion of this court in *Graves* v. *New York ex rel O'Keefe*, 306 U.S. 466, for that case involved a resident of the taxing state, and held that federal employees should not be relieved "from contributing their share of the financial support of the other government, whose benefits they enjoy. * * *" (pg. 483). The legal arithmetic in adding to this case, cases such as *Shaffer* v. *Carter*, 252 U.S. 37, upholding taxes on non-residents deriving income from private business activity within the taxing state, will not do. This is adding apples and oranges. Respecting private employment, local government exercises jurisdiction over the activities of both the employer and the employee as well as the relationship between them. But respecting federal employment, local government does not and cannot exercise any jurisdiction of the activity of the employer or the employee or the relationship between them. Philadelphia confers no "benefit" on these employees in respect to their activities as federal employees. Any attempt to do so would be a prohibited interference with the federal government. Incidental advantages enjoyed by anyone who happens to be in or near Philadelphia are not the subject of taxation, and irrelevant, for the "benefit" must refer to the event upon which the tax is incident. *Spector Motor Services Inc.* v. *O'Connor*, 340 U.S. 602, 607-608.

This is not simply a matter of confiscation as would be the case of a taxing power without jurisdiction. It is far more serious. It is the taking of the very body of the individual without due process, and an arbitrary arrest and imprisonment in violation of the Fourth and Fifth Amendments.

CONCLUSION

For the foregoing reasons, petitioner respectfully prays that his petition for certiorari be granted.

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APPENDIX A

Statutes Involved

CONSTITUTION OF THE UNITED STATES

Article I, Section 8, Clause 17:

"[Congress shall have power] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *"

Amendment 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5.

No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *

PUBLIC SALARY TAX ACT (Portions of the Act of April 12, 1939, 53 Stat. 575)

United States Code, 1952 edition, Title 5, Section:

"84a. *Consent of United States to taxation of compensation of officers and employees of United States, Territories,* etc. The United States hereby consents to the taxation of compensation, received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more

of the foregoing, by any duly constituted taxing authority having jurisdiction to tax such conmpesation, if such taxation does not discriminate against such officer or employee because of the source of such compensation."

BUCK ACT (Portions of Act of October 9, 1940, 54 Stat. 1059)

United States Code, 1952 Edition, title 4, Sections—

"106. *Same; income tax.*—(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

"108. *Same; jurisdiction of United States over Federal areas unaffected.*—The provisions of sections 105-110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

"110. *Same; definitions* • • •

"(e) The term 'Federal area' means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State."

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,499

UNITED STATES ex rel. GEORGE E. THOMPSON, *Appellant*,

v.

WILLIAM LENNOX, Sheriff of the City of Philadelphia

Appeal from the United States District Court for the Eastern District of Pennsylvania

Argued May 12, 1958

Before KALODNER, STALEY and HASTIE, *Circuit Judges*

Opinion of the Court

(Filed July 18, 1958)

PER CURIAM

Two issues are presented by this appeal from the Order of the District Court dismissing petition for a writ of habeas corpus, filed by a resident of New Jersey who is a civilian employee at the Philadelphia Naval Shipyard, following his seizure by the Sheriff of Philadelphia, pursuant to a writ of capias ad respondendum issued by the Municipal Court of Philadelphia, Pennsylvania to recover fines and penalties for failure to file a return and to pay the Philadelphia wage tax.

The District Court premised its dismissal of the petition for the writ on these grounds: (1) a federal court should not exercise its discretion to grant a writ of habeas corpus to free a person held in State custody where such person has not exhausted available State court remedies; and (2) Philadelphia has jurisdiction to impose its wage tax on the earnings of a non-resident federal employee at the Philadelphia Naval Shipyard.

Due consideration has been given to briefs of the parties and those filed by the State of New Jersey and the Senate of New Jersey as amicus curiae.

We are of the view that the District Court did not err and that no useful purpose will be served by elaborating upon its well-reasoned and adequate disposition.

The Order of the District Court will be affirmed upon the opinion of Judge Van Dusen, 157 F. Supp. 93 (E.D. Pa. 1957). Cf. Kiker v. Philadelphia, 346 Pa. 624 (1943), cert. den. 320 U.S. 741; Philadelphia v. Cline, 158 Pa. Super. 179 (1945), cert. den. sub nom. Barnes v Philadelphia, 328 U.S. 848 (1946).

Present: KALODNER, STALEY and HASTIE, *Circuit Judges.*

Judgment

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:

HARRIET G. HUMPHRYS
Chief Deputy Clerk

July 18, 1958

Sur Petition for Rehearing

Present: McLaughlin, Kalodner, Staley and Hastie, *Circuit Judges.*

After due consideration the petition for rehearing in the above-entitled case is hereby denied

Judge McLaughlin votes to grant the petition.

By the Court

Kalodner
Circuit Judge

Dated: September 17, 1958